

by the same person, it may be determined that the differences were a result of negligence and not clerical error or other mistake.

(d) *Knowledge*. A penalty may be assessed for differences in a manifest that are unknown to the aircraft commander or owner.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 99-64, 64 FR 43266, Aug. 10, 1999]

§ 122.163 Transit air cargo traveling to U.S. ports.

(a) *Application*. If transit air cargo is traveling from the port of arrival to another U.S. port under § 122.119, a liability shall be assessed, as set out in § 18.8 of this chapter if there has been:

- (1) Shortage in delivery;
- (2) Irregular delivery; or
- (3) Non-delivery.

(b) *Liabilities assessed*. The liabilities assessed under this section are imposed as liquidated damages under a carrier's bond.

(c) *Value of merchandise*. The port director shall determine the value of merchandise for assessment purposes based on the following factors:

- (1) Any data or documents available to the airline which presented a receipt for the transit air cargo, and available to the importing airline relating to the description and value of the cargo; and
- (2) Other information available to the port director relating to the same or similar merchandise. If the data or documents required by this section are not submitted within 90 days of the date requested, the port director shall determine value on the basis of other available information. The transit air cargo manifest does not reflect value.

§ 122.164 Transportation to another port for exportation.

If transit air cargo is traveling from the port of arrival to another U.S. port for later exportation, any liquidated damages for shortages or irregular delivery shall be assessed as provided in § 122.163.

§ 122.165 Air cabotage.

(a) The air cabotage law (49 U.S.C. 41703) prohibits the transportation of persons, property, or mail for compensation or hire between points of the

U.S. in a foreign civil aircraft. The term "foreign civil aircraft" includes all aircraft that are not of U.S. registration except those foreign-registered aircraft leased or chartered to a U.S. air carrier and operated under the authority of regulations issued by the Department of Transportation, as provided for in 14 CFR 121.153, and those aircraft used exclusively in the service of any government.

(b) Customs officers detecting possible violations shall report the matter to Headquarters, Attention: Entry Procedures and Carriers Branch. Liability should not be assessed under 49 U.S.C. Chapter 463 pending instructions from Headquarters since certain limited domestic transportation by foreign civil aircraft is permitted under regulations issued by the Department of Transportation.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98-74, 63 FR 51289, Sept. 25, 1998; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

§ 122.166 Arrival, departure, discharge, and documentation.

(a) *Liability for civil penalties*. Except as otherwise provided, any aircraft pilot violation of the requirements of section 433, Tariff Act of 1930, as amended, (19 U.S.C. 1433), with respect to the following actions shall be liable for civil penalties as provided by section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436), and described in paragraph (c) of this section:

- (1) Advance notification of arrival;
- (2) Report of arrival;
- (3) Landing of aircraft;
- (4) Presentation of documentation;
- (5) Departure from the port, place, or airport of arrival without authorization; or
- (6) Discharge of passenger, or merchandise (to include baggage) without authorization.

(b) *Liability for criminal penalties*. Upon conviction, any aircraft pilot violating any of the Customs requirements described in paragraph (a) of this section shall, in addition to civil penalties be subject to criminal penalties as set forth in section 436, Tariff Act of 1930, as amended, (19 U.S.C. 1436), and described in paragraph (c) of this section. If the aircraft has or is discovered to have had on board any